IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 8 OF 1997

Council of Scientific and
Industrial Research,
registered under Societies
Registration Act, 1960 with
its registered Office at
'Anusandhan Bhavan',
Rafi Marg,
New Delhi – 110 001 ... Appellant

versus

1. M/s Alcon Constructions
   A Partnership Firm,
   Civil Contractors,
   Builders, Developers
   with its Office at
   Velho Building, Panaji,
   Goa.

2. Shri J. S. Pinto,
   Retired Superintending
   Engineer, Campal, Panaji,
   Goa. ... Respondents

Mr. S. N. Joshi, Advocate for the Appellant.

Mr. S. G. Dessai, Senior Advocate with Mr. Nitin Purushan, Advocate for the Respondents.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE OF RESERVING
THE JUDGMENT: **7TH** SEPTEMBER,
2004.
DATE OF PRONOUNCING
THE JUDGMENT: 15TH SEPTEMBER,
2004.

JUDGMENT(PER N.A.BRITTO, J.)

In the present appeal, filed under Section 39 of the Arbitration Act, 1940(Act, for short), the Appellant assails the award of post decretal interest by the learned Civil Judge, Senior Division, Panaji, on the assumption that it is awarded at the rate of 12% per annum.

2. Some facts are required to be stated to dispose off the present appeal.

3. The Appellant by virtue of an agreement dated 15th December, 1979, entrusted Respondent No.1 the construction of Main Physics Block, Godown, etc.

4. Disputes and differences having arisen between the Appellant and Respondent No.1, the same were referred to the arbitration of Dr. K. K. Sud and subsequently, the said Dr. K. K. Sud was removed and replaced by J. S. Pinto, retired Superintending Engineer, Panaji.

5. The said J. S. Pinto, Sole Arbitrator, made his Award dated 16th May, 1991, and the relevant portion of the said Award reads as follows:-

> "In view of my findings on the various issues above, I award that Respondents, Council of Scientific and Industrial Research do pay to the Claimants M/s. Alcon Constructions, an amount of Rs.15,57,250/- only together with interest on the awarded amount at 12% from the date of the Award till the date of payment or the date of decree by the competent Court, whichever is earlier".

6. The Appellant filed an application dated 27th August, 1993, under Section 33 of the Act for setting aside the said Award of the said J. S. Pinto(Respondent No.2), on various grounds. The said application came to be disposed of by the learned Civil Judge, Senior Division, Panaji, being Civil Miscellaneous Application No.267/91/A. In disposing off the said application, the learned Civil Judge, Senior Division, Panaji, observed that the Appellant was not able to point out any illegality in the award and on going through the same, he found that it was not illegal. The learned Civil Judge, Senior Division, Panaji, then proceeded to dismiss the said application of the Appellant and make the award dated 16th May, 1991, rule of the Court. The last part of the Judgment/Decree of the learned Civil Judge, Senior Division reads as follows:-

> "Accordingly, a decree in terms of Award is passed wherein the claimants are entitled for interest from the date of the decree till full payment with costs".

7. As already stated, the Appellant has understood that the interest awarded by the learned Civil Judge, Senior Division, Panaji, from the date of the decree till payment is at 12% because it is at that rate that the learned Arbitrator had awarded post award interest on the sum of Rs.15,57,250/- to be paid by the Appellant to Respondent No.1.

8. Mr. S. N. Joshi, learned Counsel of the Appellant, has submitted that in terms of Section 34 of the Code of Civil Procedure, 1908, the post decretal interest ought to have been 6% and not 12% since the liability adjudged had not arisen out of a commercial transaction. In support of the said submission, Mr. Joshi, has placed reliance on an unreported decision of a Division Bench of this Court dated 2nd May, 1997, in Appeal From Order No.20 of 1989(**Council of Scientific & Industrial Research** v. **M/s. Dempo Engineering Services and another).**

9. Our attention has also been drawn to the case of **M/s. Jagdish Rai and Brothers** v. **Union of India(**AIR 1999 SC 1258).

10. In the case of **Council of Scientific & Industrial Research** v. **M/s Dempo Engineering Services and another** **(**supra) an amount of Rs.6,77,000/- with interest at the rate of 12% per annum was ordered to be paid from 17th December, 1978 till the date of the award that is to say 26th December, 1985 till the date of the Decree and further interest at the same rate of 12% per annum from the date of decree till realisation. It was urged before this Court that the grant of interest at the rate of 12% per annum was justified as the claimant was a contractor and the interest was to be paid for making up of its loss as damages. This Court referred to Section 34 of the Code of Civil Procedure and stated that the said Section laid down a prohibition in granting interest exceeding 6% unless it is a commercial transaction. This Court observed that Explanation II had made it amply clear as to under what circumstances, the transaction should be treated as a commercial transaction if it is connected with the industry, trade or business of the party incurring the liability. Since, the parties could not point out that the Appellant(Council of Scientific & Industrial Research) was indulging in commercial transaction, this Court held that the future interest exceeding 6% awarded by the Court below for the period after passing of the award was quite illegal and liable to be quashed and as a result, this Court held that M/s Dempo Engineering Services would be entitled to claim interest on the principal amount only at the rate of 6% per annum from 26th December, 1985 till realisation and proceeded to modify the trial Court's decree accordingly.

11. The case of **M/s Jagdish Rai and Brothers** v. **Union of India** (supra) was a case where a claim was made for grant of interest in respect of an amount awarded pursuant to arbitration in an application under Section 29 of the Arbitration Act, 1940 r/w Section 34 CPC, though such a claim was not made before the Court of Sub-Judge where the proceedings were pending for making the award the rule of the Court. The Supreme Court stated that the claim for interest not having been made before the Court in which proceedings for making the award the rule of the Court were pending would certainly disentitle the appellant for making such a claim during first three stages of pre-arbitration and post-arbitration that is between award and filing of application inasmuch as several considerations will have to be examined before award of interest and at what rate. Therefore, when the award had not been challenged for not granting interest, the award could not be upset to that extent. The view taken by the High Court appears to be correct to that extent. However, that is not the end of the matter. The High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the award. The Courts have taken the view that award of interest under Section 34 CPC is a matter of procedure and ought to have been granted in all cases when there is a decree for money unless there are strong reasons to decline the same. In the present case the Appellant had made a claim for interest before the Arbitrator but the same had been

denied and no reasons are forthcoming thereto. Whatever that may be, at any rate after the Sub-Judge made an award the rule of the Court the decree ought to contain a provision for making payment of interest. If such payment had not been made appropriate correction of the decree could be ordered to be made when an application had been made before the High Court.

12. In our opinion, the ratio in the case of **M/s Jagdish Rai and Brothers** v. **Union of India**(supra) is inapplicable to the case at hand.

13. As stated by the Supreme Court in the case of **M/s Jagdish Rai and Brothers** v. **Union of India(**supra) there are four stages or periods for grant of interest, namely:-

i). Pre-reference;
ii) Pendente lite;
iii) Post Award;
iv) Post Decree.

14. There is no dispute now that the power to grant interest for the first, second and the third periods is that of the Arbitrator as laid down by the Hon'ble Supreme Court in the cases of **Executive Engineer Irrigation, Galimala and others** v. **Abnaduta Jena** (AIR 1988 SC 1520), **Secretary, Irrigation Department** v. **G. C. Roy**((1992) 1 SCC 508) and **State of Orissa** v. **B. N. Agarwalla ((1997) 2 SCC** 469, respectively. There can also be no dispute that

the grant of interest for the fourth period is governed by Section 29 of the Act which reads as follows:-

> "Interest on Awards -
> Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems resonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree".

15. Section 29 of the Act gives a discretion to the Court to award interest at the rate the Court deems reasonable to award. This provision has been made with a view to compensate the person in whose favour the award is confirmed for the loss he would sustain on account of non payment of the awarded amount. This provision is also meant to act as a pressure to compel the person against whom the award is made to satisfy the decree as early as possible. Admittedly, the interest ordered to be paid by the Arbitrator was on damages and not on money lent or borrowed in a commercial transaction. (Emphasis supplied)

16. There is now unanimity in the judicial view that the payment of post decretal interest is governed by Section 29 of the Act and not by Section 34 of the Code of Civil Procedure. This view was held by this Court in the case of **S. N. Srikantia** v**. Union of**

India and another (AIR 1967 Bombay 347) wherein this Court observed that the Arbitration Act being both an amending and consolidating Act is intended to be a self-contained Code and therefore, exhaustive of the law on the subject or on some particular point, a corollary will follow that it declares the whole of the law upon a particular subject or point and will carry with it a negative import that it shall not be permissible to do what is not mentioned in it and further that what is permissible thereunder will be done only in the manner indicated and no other. Section 29 of the Act is exhaustive of the whole law upon the subject of "interest on awards". The section expressly makes a provision for awarding interest on awards from the date of decree onwards and it is silent as to whether interest can be awarded on the principal sum adjudged by the award for any period prior to the passing of the decree.

17. The same view was held in the case of **State of Orissa and another** v**. United Commercial Company**(AIR 1996 Orissa 217) by stating that Section 29 of the Act was exhaustive of the whole law upon the subject of interest on award so far as the Civil Court is concerned and that the said Section expressly makes provision for directing payment of interest on the principal sum adjudged by the award and confirmed by the decree, from the date of the decree.

18. A Division Bench of this Court in the case of **Arjandas**

Naraindas Adnani v**. Narsingdas Naraindas Adnani (**AIR 1997 Bombay 20) again reiterated the principle that Section 29 of the Act is exhaustive of the whole law upon the subject of "interest on awards" and since the said Section enables the Court to award interest on the principal sum adjudged by an award from the date of the decree onwards, it must be held that it carries with it the negative import that it shall not be permissible to the Court to award interest on the principal sum adjudged by an award for any period prior to the date of the passing of the decree. In this view of the matter, it could be said that the decision in the case of **Council of Scientific & Industrial Research** v**. M/s Dempo Engineering Services and another**(supra) was rendered per incurrium, as the provisions of Section 29 of the Act were not brought to the notice of the Court.

19. We have seen that Section 29 of the Act gives a discretion to the Court not only to award interest from the date of the decree but at the rate the Court deems reasonable. Any discretion has got to be judicially exercised. The limitations of Section 34 of the Code of Civil Procedure regarding the award of post decretal interest are not contemplated in Section 29 of the Act and, therefore, need not be read into it. Although, the learned Civil Judge, Senior Division, Panaji, did not specify the rate of interest awarded by him, the Appellant has taken it to be at 12% probabl;y because the learned Arbitrator had also awarded the same rate for period preceding the

said decree of the Court. Since the Arbitrator awarded interest at the rate of 12% regarding which there was no challenge, in our view, it could not be said that the learned Civil Judge, Senior Division, had exercised his discretion arbitrarily, by awarding post decretal intereest at the rate of 12% in case he meant the same. In other words, the interest awarded by the learned Civil Judge, Senior Division will be at 12%. It could not be said to be excessive for the relevant period.

20. Consequently, we find no merit in this appeal. The same is hereby dismissed with no order as to costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

RD.